

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3068 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

M A KATHI

Versus

DIRECTOR, ACCOUNTS & TREASURIES

Appearance:

None present for Petitioner

MR HL JANI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/11/97

ORAL JUDGEMENT

1. The matter was called out for hearing in the first round then in the second round and lastly in the third round but none put appearance for the petitioner. Heard the learned counsel for the respondents and perused the special civil application.

2. The petitioner, an Accounts Officer, of the Directorate of Accounts and Treasuries, filed this

special civil application and challenge has been made to the order of the Gujarat Civil Services Tribunal, Gandhinagar in Appeal No.263/85 decided on 14th May, 1986 under which the appeal of the petitioner was partly dismissed.

3. Under the order dated 8th May, 1985, the respondent No.1 ordered for stoppage of one annual grade increment of the petitioner for a period of two years without future effect in connection with the misconduct alleged against the petitioner. Against this order, the petitioner filed an appeal No.263/85 before the Gujarat Civil Services Tribunal, Gandhinagar. The charge No.2 was found to be not proved by the Tribunal against the petitioner. However, so far as the charge No.1 is concerned, the Tribunal held that the petitioner was guilty of gross negligence and should therefore be penalised. The order of withholding of one grade increment for a period of two years without future effect has been reduced to the withholding of petitioner's one grade increment for a period of one year without future effect.

4. The charge No.1 against the petitioner reads as under:

- (i) When the appellant was working as Accounts Officer in the Office of Commandant General, Home Guards, he draw twice the honorarium of Rs.122-50ps for setting question papers for departmental examination and thus misappropriated Government money.

5. The Tribunal has recorded a finding in favour of the petitioner that it is not a case of misappropriation of Government money by the petitioner. However, the Tribunal has made out a case for which there was no charge given to the petitioner. It was not a charge against the petitioner that by drawing twice the honorarium for setting question papers for departmental examination he has committed a gross negligence. The charge was of misappropriation of amount and the charge of gross negligence was not at all there against the petitioner. The Tribunal could not have made out a new charge against the petitioner. Only on this short ground, this special civil application deserves acceptance.

6. In the result, this special civil application is allowed and the order of withholding of petitioner's one grade increment for a period of one year without future

effect is quashed and set aside. Rule is made absolute.

zgs/-